1951 **File No.** O. Prov. fund 51

P13E: Legal Deptt

F1 **BRANCH**

Subject:— Opinions under the Provident funds Act 1925

O. Prov-fund 151

File No.

Gen. 194 e.

34-H

1951 File No. O. Prov. Fund 51

P13E - Legal Deptt

A BRANCH

Subject:— Opinions under the Provident funds Act 1925

O. Prov-fund/51

File No.

Gen. 194 e.

34-A

C O N T E N T S.

Legal Department File No. O. Prov. Fund/1951.

Sr. No.	R.I./ O.No.	Subject	Pages
		Opinions under the Provident Funds Act, 1925.	
1.	254/-4-1-51	Question whether it would be feasible to permit the employees of the Housing Boards and of the School Boards to subscribe to the B.G.P.Fund or the contributory Provident Fund.	1-2
2.	565/18-1-51	Question whether there is any objection to the payment of Rs.113/- to the mother of the deceased subscriber after obtaining an indemnity bond.	3-6
3.	13175/17-8-51	Question whther in the absconding subscriber . There is any objection to pay thearrears of salary and allowances and the n amount of G.P.Fund standing in his name to his wife and mother, the applicants.	7-8
4.	14388/10-9-51	Question whether it would be competent for Govt. to appropriate or attach the deposits of Shri Manwani in the Provident Fund towards the satisfaction of Govt. dues.	9-10
5.	917-confl 2-11-51	Claim by the Shrimati Baluch to arrears of pay etc.	11-12
6.	17912/12-11-51	Question whether the employer's contribution with interest lying to the credit of the staff under the Nursing Association in their fund amounts. onl-5-47 should be credited to Govt. amcount and service to be counted for pension should be that which has been put in by the staff from the date they have been contributing to the contributory Provident Fund of the respective Nursing Associations	

Sr. No.	R.I/.	O.No.	Subject	Pages
7.		17883/12-11-51	Questions(1)whether in view of the fact that the two sons of Subhadramma are illegitimate the whole nomination should be deemed to the be void;or (2) Whether the part of nomination in favour of the three sons of the first wife should be consideredto be valid andpayment made accordingly; and whether the balance of the deposit should be disposed of as if there had been no nomination.	17-18
8.		18741/22-11-51	Question whether when the Provident Fund Rules of the Bombay Nurses, Midwives and Health Visitors' Council are no longer applicable the niminations under- made under those rules would be valid and if not whether fresh nominations under the B'bay Contributory Provident Fund Rules would be necessary.	19-20

Office of the R.L.A.

The question referred to the R.L.A. for advice is whether it would be feasible to permit the employees of the Housing Board and of the School Boards to subscribbe to the Bombay General Provident Fund or the Contributory Provident Fund.

2. Both the Bombay General Provident Fund and the Contributory Provdent Fund have been established by Govt. for the benefit of its pensionable and non-pensionable servants; and the Rules governing these funds which were framed under section 241(2) of the Government of India Act, 1935, cannot apply to persons who are not in the service of Government. The Housing Board established under section 3 of the Bombay Housing Board Act, 1948, is not a part of Government. It is an independent body corporate created by statute. Under section 13 of the Housing Board Act, the conditions of service of the servants of the Housing Board which would include the matter of provident fund also, would be governed by the Regulations made by the Board. Similarly, the employees of the School Board are; under section 20 of the Bombay Primary Education Act, servants of the District School Board or of the authorised municipality, both of which are also independent bodies corporate created by statute. It follows, therefore, that the employees of the Housing Board and of the School Boards cannot be permitted to join the Bombay General Progident Fund or the Contributory Provident Fund.

3. The achieve the purpose which F.D. has in view, two things are necessary:(1) that the Provident Fund should be established by Government or by its authority, and(2) that for the security of the subscribers thereto, it should attract the provisions of the Provident Funds Act, 1925, The second condition can be fulfilled in respect of a provident fund, if one is established by the authority of Government for empplyees of the school Board, as such fundwill be P.T.O.

covered by the definition given in clause(d) of section 2 of the Provident Funds Act. That condition can also be fulfilled in respect of provident fund for the employees of the Housing Board in case a notification under section 8(2) is issued by Government. The first condition will depend upon proper legislative provision being made therefor. In respect of a provident Fund for the employees of the School Boards, the present legislative provisions are contained in section 63(2)(f) of the Bombay Primary Education Act, 1947, and the Rules made thereunder. These Rules show that the provident fund is established not by or the authority of Government, but by the District School Board or the authorised municipality: vide rule 193 of the Bombay Primary Education Rules, 1949. If the first condition is to be fulfilled in respect of the provident fund for the employees of the School Board, it would be necessary either to change the Rules radically making it clear that the provident fund is established by Govt. or by its authority and not by the bodies concerned; or better still to amend section 63 making it clear that Govt. is establishing the provident fund for the employees of the School Boards. There should be no difficulty in the way of such amendement if it be correct that Govt. are in fact making a grant-in-aid equivalent to the body's contributions to the provdent fund. Similarly, in the case of the provident fund for the employees of the Housing Board, the Housing Board Act may be suitably amended for establishing a provident fund by Govt. for the Board's employees. There should be no objection to making provision in the proposed amendment for some portion of the contribution being paid by the School Board or the Housing Board, as the case may be. If provident funds are established by Govt. in this manner, it would be possible for Govt. to get control of the fund and also give those funds the benefit of the provident Funds Act, 1925, in the manner suggested above.

Sd/-

22-5-51

to F.D. No.254, dt.4th Jan.1951. Remembrancer of Legal Affairs.

L.D.R.I.No. 25303 dt. 28-12.50

Submitted with reference to P.&.S.D. Note at page 3 ante.

2. The fact may be stated as follows:-

One A.M.Tupe, a constable, who was a subscriber to the Bombay General Provident Fund died on 12-8-1945. He has nomited his wife, Sonubai, to receive the G.P. Fund money in the event of his death. The D.S.P. Satara, has intimated that the above nominee had predeceased the subscriber, the subscriber re-married one Kondabai and that this second wife has subsequently been divorced and has ceased to be entitled to any maintenance under the customary law of the community to which she belongs. The only surviving nearest relative of the subscriber is his old mother Mrs. Bhagubai who is too old, feeble and poverty striken to be able to obtain the succession certificate as required by law to be entitled to receive the balance of the fund standing to the credit of the deceased. The Accountant General, proposes to pay the amount baingof Rs.118/- being the balance of the Fund to the mother of the deceased subscriber after ob-a obtaining an indemnity bound but without insisting on a succ a succession certificate. He has requested Govt. to let him know whether there is any objection in making the the payment on the lines suggested by him in this particular and other similar cases. P.&S.D. has no objection to the payment of.Rs.118/- to the motor of the deceased subscriber after obtaining an indemnity bond. They are, however, of the view that in similar cases if the amountx in question is comparitively large, it would be better to insist on the production of a succession certificate. G.L.A. has been requested to advise in the matter.

M.R.D.
22-6-56
C.4

Office of the R.L.A.

Seen and returned.

There is no objection to replying to Accountant General as proposed by Political and Services Department.

Sd/-
8-1-51

Remembrancer of Legal Affairs.

M.R.D.
22.6.56
C.I

U.R. to P.& S.D. No.505, dated the 10th January 1951.

Legal Department.

Shri-C.T. Shimpi Clerk of the Treasury Office Nasik has absconded from 6-4-1948 and has not since been heard of. His arrears of pay and allowances and G.P.F. amount are outstanding in him name. Shri Shimpi's wife and mother haven applied that they should be paid the arrears of pay and allowances and the amount of G.P.F. outstanding in his name. The wife of Shri C.T.Shimpi has not yet to re-married.

The R.L.A. bas been requested to adiwise in the matter.

I.D.

The view taken by the Assistant Secretary (F.D.) ~~also~~ p.12 ante is correct.

Sd/-B.D.M.

Addl. Secy. to Government.

U.R. to R.D. No. 13175 ,dt. 17-8-1951.

M.R.D.
22-6-56
C.4

Legal Department.

The view taken by the P.&.S.D. is correct. Section 3(1) of the Provident Funds Act, 1925gives protection to the compulsory deposits in the Government Provident Fund and it would not be competent for Government to apporiate or attach the deposits of Shri Manwani in the Provident Fund towards the satisfaction of Government dues. Under rule 28 of the the Bombay Civil Services Provident Fund Rules, the deposits are now payable to him. Government may write to Shri Manwani to authorise some one in India to receive the deposits on his behalf and to pay Government's dues out of the same. If he so does, the deposits should be paid to the authorised person and Government's dues recovered from him. If however Shri Manwani does not reply, the payment of the deposits should be withheld pending further communication from him.

M.R.D.
22-6-56
C.S

Sd/-

Additional Secretary to Government.

U.R.No A&F.D. No. 14388 ,dated the 10th September 1951.

Office of the R.L.A.

Claim by Shrimati Baluch to arrears of pay etc.

Provident Fund Act, 1925.

It appear that Shri Baluch has nomited his wife to receive 1/8 share of the G.P. Fund standing to his credit. If so, there would be no objection to paying that share to the widow in accordance with the nomination(Cf.Rule 30(i)(a) of the Bombay General Provident Fund Rules). Payment in accordance with a valid nomination gives Government a full discharge from all liability in respect that amount (Section 4(2) of the Provident Funds Act, 1925) and no second claim can be validly made against Government by any person. As regards other amounts and rest of the Provident Fund Deposites, no payment can be made to Shrimati Baluch unless she established her claim in a court of law as advised by the Ministry of Rehabilitation. In order to establish her claim Shrimati Baluch must obtain a succession certificate from a competent court of law. After she obtains such a certificate, it would be for the Rehabilitation Department to decide whether payment should be made to her as the amonts appear to have been declared as evacuee property by the Deputy Custodian.

M.R.D.
22-6-56
C-4

Sd/-
2-11
Remembrancer of Legal Affairs.

U.R.No A.&.R.D, No.917-conf1 ,dated the 2nd November 1951.

Legal Department.

By clause (c) of G.R. ,H.&L.G.D.,No.2653/33 dated 17th April 1947 Government reserved to themselves the power to revise the conditions of service of the clerical and inferior staff under the Nursing Associations to be taken over by Government so as to bring this staff in line with similar staff in Government service. By G?R.,L.S.G.& P.H.D.,No. 2653/33 dated the 15th March 1950, Government decided that the moneys lying with the G.T. Hospital Nursing Association andm J.J. Hospital Nursing Association to the credit of the inferior staff transferred by the Associations to Government establishment, on 1st May 1947, should be taken over by Government and these deposits should be regulated in accordance with rule 32(b) of the Bombay General Provident Fund Rules. Government has now decided to treat the inferior staff transferred by the Associations to Government establishment as being taken over in pensionable service. The question raised for the R.L.A.'s consideration is whether the orders proposed by P&.S.D. that that the employer's contribution with interest thereon lying to the credit of this staff in their respective contributory provident fund accounts on 1-5-1947 shouldbe credited to Government account and the service to be counted for pension should be that which has been put in by the staff in question from the date they have been contributing to the contibutory providdnt fund of the respective Nursing Association are in order.

Rule 32(2) of the the Bombay General Provident Fund Rules provides:

"If a Govt. servant who is a subscriber to any contributory provident fund is permanently transferred to pensionable service under the Government of Bombay and elects or is required to earn pension in respect of such service -

(i) the amount of subscriptions, with interest there standing to his credit insuch contributory provident fund at the date of transfer shall wit

the consent of the other Government, if any, be transferred to his credit in the fund;

(ii) the amount of Govt. contributions, with interest thereon, standing to his credit in such contributory provident fund shall with the consent of the other Government, if any, be repaid to Government and credited to provincial revenues; and

(iii) he shall in exchange be entitled to count towards pension such part part of the period during which he subscribed to such contributory provident fund as the Government of Bombay may determine.

It is apparent that this rule has been applied to the staff in question as if the staff were transferred from another Gover Government to the Bombay Government. The contributory provident fund amounts having been already transferred by the Nrusing Associations, the question of their consent either under sub-rule (b)(i) / sub-rule(b)(ii) of Rule 32 does not arise. Consequently it appears that it would be competent for Government to direct that the employer's contribution with interest thereon lying to the credit of the staff can be appropriated by Government, while the amount of subscriptions with interest thereon can be credited to the general provident fund at the date of the transfer of the staff and also to direct that the previous service of the staffmshould count for pension. Apparently, therefore, the peroposal made by P&.S.D. would be legally feasible. The L.S.G. &H.D. considers that the proposal would involve a changem in one of the important conditions of service of the staff. It is not understood what that condition is. However, under G.H.H.&L.G.D., No.2653/33 dated 17th April 1947, Government have reserved to themselves the power to revise the conditions of service of the staff and the staff having acquiesced in the transfer from the Nursing Associations to Goernment would be deemed to have consented to the aforesaid power of Government. Consequently, even if there be any change in the conditions of service, it it appears that the staff can have no grievance.

Sd/-

Additional Secretary to Government

M.R.D. U.R. to L.S.G. &P.H.D.No. 17912 dated the 12th November 1951.

The questions raised for consideration are:

(1) Whether in view of the fact that the two sons of Subhadramma are illegitimate the whole nomination should be deemed to be void; or

(2) whether the part of nomination in favour of the three sons of the first wife should be considered to be valid and payment made accordingly; and whether the balance of the deposit should be disposed of as if there had been no nomination.

2. Under rule 7 of the Bombay General Provident Fund Rules, if at the time of making the nomination a subscriber has a family, he has to nominate one or the other members of the family to receive the amount of the Provident Fund. The expression "family" as defined in Rule 2(1)(c) includes children, that is, legitimate children. In this case Shri Naidu's nomination was in favour of three children born of Ramanujamal and two two children bron of subhadramma. If as reported by the conservator of Forests the latter was not legally wedded to him, the nomination in favour of her two sons would be void. But that would not come in the way of giving effect to the nomination in favour of the three sons of shrimati R. As regards the remaining 50 per cent of the amount of the deposits in the Provident Fund account the best way for the Accountant General would be to make the payment to the sons of Subhadramma on their obtaining a declaration from the Court that they are the legitimate sons of Shri G.P.Naidu and in default so to do within a reasonable time to the person who produces an heirship certificate from a competent court of law treating the remaining amount as if no nomination was made in respect thereof.

sd/-
10-11

Remembrancer of Legal Affairs.

M.R.D.
22-6-56
C.4

U.R.to P.& Sd.No.17883, dated the 12th November 1951.

Office of the R.L.A.

The view taken by the Political and Services Department in paragraph 3 of its office note at page 5 ante is correct. The Provident Fund Rules of the Bombay Nurses Midwives and Health Visitors' Council being no longer applicable, the nominations made under those rules would be invalid. Fresh nominations under the Bombay Contributory Provident Fund Rules would be necessary.

Sd/-
22-11

Remembrancer of Legal Affairs.

U.R. to L.S.G. &P.H.D. No. 18741, dated the 22nd November 1951.

M.R.D.
22-11-56
C.4